

SUBJECT: Education loans by a higher-education authority or nonprofit corporation

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Rangel, F. Brown, Farabee, Goolsby, J. Jones, Morrison, E. Reyna, West
0 nays
1 absent — Uher

WITNESSES: For — Kathryn Bryan, North Texas Higher Education Authority, Inc., Higher Education Servicing Corporation; Robert Ziemski, COSTEP

Against — Mary Keller, Brazos Higher Education Authority, Pecos Higher Education Authority; Ellis Tredway, Brazos Higher Education Service Corporation

On — Jim Buie, Texas Bond Review Board

BACKGROUND: Higher Education Servicing Corporations have been servicing student loans in Texas for more than 20 years. These corporations service loans for the state's five higher education authorities in various parts of the state. These authorities were established by Education Code, ch. 53, to provide student loan access across the state. These authorities are not-for-profit corporations designated by one or more Texas home rule cities to act on their behalf.

These authorities provide liquidity to financial institutions that make student loans by purchasing their guaranteed student loans. The authorities fund their programs primarily through the sale of tax-exempt bonds. Borrowers benefit from the tax-exempt funding through lower loan costs and discounts for repayment. The authorities also work with higher-education institutions to provide low-cost loan repayment programs and debt counseling. They also provide students and families with information on obtaining financial aid for higher education.

The Higher Education Act of 1965 is a comprehensive federal act that, among other things, provides financial assistance for students in postsecondary and higher education. This act created such programs as the Pell Grants, Federal College Work-Study, Federal Supplemental Educational Opportunity Grants, Federal Perkins Loans, two primary loan programs (Federal Family Education Loans and Federal Direct Loans), and a new version of the former State Student Incentive Grant program that is now known as LEAP, the Leveraging Educational Assistance Partnership program.

Finance Code, ch. 342 regulates consumer loans in Texas, including licensing requirements for qualified lenders. Chapter 303 sets guidelines for the applicability, computation, and publication of rate ceilings.

DIGEST:

CSHB 1938 would amend Education Code, sec. 53.47 to allow only higher education authorities that were “qualified nonprofit corporations” to issue revenue bonds or otherwise borrow money to obtain funds to purchase or to make education loans that would be guaranteed under the provisions of the Higher Education Act of 1965.

CSHB 1938 would define a “qualified nonprofit corporation” as follows:

- ! a nonprofit corporation that issued bonds on or after January 1, 1990, and before January 1, 2001, that qualified as qualified student loan bonds under Section 144(b), Internal Revenue Code of 1986, as amended; or
- ! a nonprofit corporation that the Bond Review Board determined met a need for federally-guaranteed student loan financing that existing qualified nonprofit corporations could not meet.

CSHB 1938 would require the Bond Review Board to consider the following criteria in making its determination: the geographic coverage of existing qualified nonprofit corporations and the willingness and ability of existing qualified nonprofit corporations to serve the eligible lenders proposed to be served.

CSHB 1938 would require that an education loan made under Education Code, sec. 53.47 that was not made under the Higher Education Act of 1965

be made only by a qualified education loan lender and not in an amount greater than the difference between the cost of attendance and the amount of other student assistance to the student, other than certain federal parent loans, for which a student borrower may be eligible. CSHB 1938 would define a “qualified education loan lender” as a nonprofit corporation incorporated under the laws of the state that:

- ! is a qualified nonprofit corporation;
- ! has serviced education loans made under the Higher Education Act of 1965 for a qualified nonprofit corporation for at least 10 years; or
- ! is a charitable organization qualified under Section 509(a)(2), Internal Revenue Code of 1986, as amended, that provides services to a qualified nonprofit corporation

These education loans would be subject to the consumer loan provisions set forth in Finance Code, ch. 342, with two exceptions. First, the maximum interest rate on the loan could not exceed the rate allowed under Subchapter A of Finance Code, ch. 303. Second, the application and originating fees could be agreed to by the parties and assessed at the inception of the loan, provided that if such fees constituted additional interest under the law, the effective rate of interest agreed to over the stated term of the loan would not exceed the rate allowed by the optional rate ceiling set forth in Subchapter A, Finance Code, ch. 303. Accrued unpaid interest could be added to unpaid principal at the beginning of the agreed repayment period at the borrower’s option and in accordance with the terms of the agreement for purposes of determining the total principal amount due at the inception of the repayment period.

CSHB 1938 would allow qualified nonprofit corporations to make education loans and issue securities or otherwise obtain funds to purchase or make education loans. The bill would exempt authorities or nonprofit corporations making education loans under Education Code, sec. 53.47 from the licensing requirements of Finance Code, ch. 342. CSHB 1938 would remove provisions in the current law that relate to the custody of student or parent loan notes.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 1938 would benefit the state as a whole as well as Texas students, families, and higher education institutions by enabling Texas students to borrow from experienced local lenders to meet the costs of attending school that currently are not being covered by other forms of financial aid. Texas higher education institutions would be able to attract and retain more qualified students. Texas families would be provided with additional low-cost alternatives for meeting the financial burden of higher education.

CSHB 1938 would benefit the Texas economy and financial institutions by retaining business in the state that currently is being drawn out of state. It would allow Texas higher education authorities with proven experience as bond issuers to continue to use tax-exempt bonds to finance loans and fund outreach services for Texas students and families. Finally, it would provide a clear cut mechanism for Texas communities to gain authorization for new student loan bond issuers if a real need ever were documented.

Financial aid to students has not kept up with the rising cost of higher education. According to the Texas Higher Education Coordinating Board, Texas has the 29th highest tuition and fees in the nation. Tuition and fees at Texas public universities have nearly doubled since 1992. The burden of paying for a higher education has been shifting from the state to students and their parents. Currently, 22 percent of the cost of tuition and fees is being paid for by students and their families, compared with 16 percent in 1992. Other education-related expenses, such as food, transportation, housing, and books, also have risen, driving up the total cost of higher education in Texas. As a result, students have been forced to seek out-of-state loans and high interest credit card loans to meet these additional costs. CSHB 1938 would help remedy this situation by allowing Texas students and their families to borrow from local lenders at reasonable rates and for reasonable fees.

In order to protect consumers, CSHB 1938 would limit the provision of these loans to qualified nonprofit corporations that are eligible to issue tax exempt bonds. There are five such qualified lenders in the state. This is a sufficient number of lenders, particularly relative to most other states in the country

that have only one such lender. If these authorities ever were unable to fulfill the financial needs of the educational borrowers and lenders throughout the state, CSHB 1938 would provide a straightforward mechanism with clear-cut criteria for the Bond Review Board to use to authorize new bond issuers.

OPPONENTS
SAY:

CSHB 1938 would create a monopoly for certain student loan bond issuers. Specifically, the bill would distinguish a “qualified nonprofit corporation” from other nonprofit higher education authorities in the state, by defining a “qualified” nonprofit as one eligible to issue tax-exempt bonds. Currently there are only five such “qualified” nonprofits in the state. The only method that new student loan bond issuers could use to break into the market under CSHB 1938 would be by determination of the Bond Review Board.

The criteria set forth by CSHB 1938 to determine eligibility to qualify as a “qualified nonprofit corporation” would be biased against new issuers and in favor of existing issuers. CSHB 1938 would require the Bond Review Board to conduct a hearing to consider the following criteria: the geographic coverage of existing qualified nonprofit corporations; the willingness of existing qualified nonprofit corporations to serve the eligible lenders proposed to be served; and the ability of existing qualified nonprofit corporations to serve the eligible lenders proposed to be served.

In other words, under CSHB 1938 a new bond issuer would not be able to get such a designation by the Bond Review Board absent the approval of the existing bond issuers. This would rarely, if ever, occur since the existing issuers would not want additional competition, particularly since there are a very limited number of private activity bond allocation funds available. The more authorities that share it, the smaller the amount each would get.

The Bond Review Board should be required to consider criteria that determine which bond issuers are the most qualified for the job. For example, criteria should include the efficiency, cost, service, and volume of loans handled by new bond issuers. Such criteria would enable new issuers to break into the market and ensure that Texas students and their families, as well as Texas higher education institutions, were being served in the best manner and by the best bond issuers.

Finally, alternative means exist to control and regulate new bond issuers than those outlined in CSHB 1938. From a public policy perspective, it would be more effective for the Bond Review Board, the state agency with expertise in this field, to address this issue rather than the Legislature.

NOTES:

The committee substitute modified HB 1938 as filed by removing provisions that the interest rate on an education loan may be computed by spreading all interest contracted for, charged, or received during the state term of the loan. It also modified HB 1938 to provide that certain fees may be agreed to by the parties and assessed at the inception of the loan, provided that the effective rate of interest agreed to may not exceed the rate allowed by current provisions. The substitute also modified the original to provide that any accrued interest may be added to unpaid principal at the beginning of the agreed repayment period at the borrower's option. The substitute also removed eligibility requirements of a nonprofit corporation in order to issue bonds and moved the eligibility requirements under the definition of a qualified nonprofit corporation.

The companion bill, SB 1723 by Bivins, was referred to the Senate Education Committee on March 14.